

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

AMERICAN SECURITY  
INSURANCE COMPANY

PLAINTIFF

vs.

No.  
1:01CV273-D-D

ELLIS B. LANG

DEFENDANT

OPINION GRANTING MOTION TO DISMISS

Presently before the court is the Defendant's motion to dismiss or, in the alternative, to deny the Plaintiff's petition to compel arbitration. Upon due consideration, the court finds that the Defendant's motion should be granted. Accordingly, the Plaintiff's petition seeking an order compelling arbitration shall be denied and dismissed.<sup>1</sup>

*A. Factual and Procedural Background*

On December 2, 1999, the Defendant obtained a consumer loan from the Personal Finance Corporation that included the purchase of credit-related insurance from the Plaintiff American Security Insurance Company. In connection with the loan transaction, the Defendant - who can neither read nor write - signed two separate documents, one entitled "NOTICE OF ARBITRATION AGREEMENT" and the other entitled "ARBITRATION AGREEMENT." The Arbitration Agreement contains a mandatory arbitration provision, requiring that essentially all claims or disputes between the parties in connection with the loan transaction be submitted to binding arbitration.

Despite the Agreement's arbitration provision, the Defendant commenced a civil action against

---

<sup>1</sup>Also pending before the court is the Plaintiff's motion for summary judgment, the Defendant's motion to abstain and dismiss, and the Defendant's motion to supplement. Upon due consideration, and in light of the court's disposition of this matter, the court finds that all three of these motions should be denied as moot.

the Plaintiff in the Circuit Court of Hinds County, Mississippi, on October 10, 2000, claiming fraudulent misrepresentation in connection with the December 2, 1999, loan transaction. Thereafter, on July 17, 2001, the Plaintiff filed a petition in this court, pursuant to Section Four of the Federal Arbitration Act, seeking an order compelling arbitration and staying the pending state court proceedings. Then, on September 27, 2001, the Defendant filed the present motion seeking to have the Plaintiff's petition dismissed.

### *B. Discussion*

#### 1. Standard for Compelling Arbitration

Congress provided in the Federal Arbitration Act (FAA) that a written agreement to arbitrate in a contract involving interstate commerce "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. §2 (1999). Section Four of the FAA specifically contemplates that parties, such as the Plaintiff, that are aggrieved by another party's failure to arbitrate under a written agreement, may file an original petition in a United States District Court to compel that party to arbitrate their claims. 9 U.S.C. §4 (1999). In addition, the FAA expresses a strong national policy in favor of arbitration, and any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration. Southland Corp. v. Keating, 465 U.S. 1, 10, 105 S.Ct. 852, 857, 79 L. Ed. 2d 1 (1983); Mouton v. Metropolitan Life Ins. Co., 147 F.3d 453, 456 (5<sup>th</sup> Cir. 1998).

The Fifth Circuit has directed that courts are to perform a two-step inquiry to determine whether parties should be compelled to arbitrate a dispute. R.M. Perez & Assocs., Inc. v. Welch, 960 F.2d 534, 538 (5<sup>th</sup> Cir. 1992). First, the court must determine whether the parties agreed to arbitrate the dispute in question. This determination involves two considerations: (1) whether there is a valid agreement to arbitrate between the parties; and (2) whether the dispute in question falls within the scope of that arbitration agreement. Webb v. Investacorp, Inc., 89 F.3d 252, 257-58 (5<sup>th</sup> Cir. 1996). Once the court finds that the parties agreed to arbitrate, it must then consider whether any federal statute or

policy renders the claims nonarbitrable. R.M. Perez, 960 F.2d at 538. In conjunction with this inquiry, a party seeking to avoid arbitration must allege and prove that the arbitration provision itself was a product of fraud or coercion; alternatively, that party can allege and prove that another ground exists at law or in equity that would allow the parties' contract or agreement to be revoked. Sam Reisfeld & Son Import Co. v. S.A. Eteco, 530 F.2d 679, 680-81 (5<sup>th</sup> Cir. 1976).

## 2. The Defendant's Allegations of Fraud

In connection with the second step of the court's inquiry, the Defendant argues, *inter alia*, that the parties' Arbitration Agreement was a product of fraud and, therefore, the Defendant should not be compelled to submit his claims to arbitration.

It is undisputed that the Defendant is functionally illiterate, unable to either read or write and possessing only a first-grade education. It is also undisputed that, while taking out the loans at issue and purchasing the subject insurance, the Defendant informed the employees of Personal Finance Corporation that he could neither read nor write, and he specifically inquired as to the contents of each document presented to him. It is further undisputed that at no time did any of Personal Finance Corporation's representatives inform the Defendant that he was signing an arbitration agreement, and thereby waiving his right to a jury trial should a dispute arise between the parties. In connection with these undisputed facts, the Plaintiff asserts that he was fraudulently induced into signing the Arbitration Agreement, claiming that in response to his queries concerning the content of the documents he was being shown, the Personal Finance representatives simply told him, among other things, that the documents consisted only of the "loan papers and the insurance papers required for the loan." At no time did any representative inform the Defendant that he was being presented an arbitration agreement.

The Plaintiff argues that under Prima Paint v. Flood & Conklin Manufacturing Co., 388 U.S. 395, 87 S.Ct. 1801, 18 L. Ed. 2d 1270 (1967), the issue as to whether the Defendant was fraudulently induced into signing the Arbitration Agreement is a matter left to the arbitrator, after the Defendant has been compelled to submit his claims to arbitration. The court does not agree.

In Prima Paint, the United States Supreme Court held that a court asked to enforce an arbitration agreement must examine only those defenses that relate specifically and uniquely to the arbitration agreement itself; the Court further held that allegations of fraud in the inducement with regard to the formation of the overall contract in which the arbitration provision is contained are to be resolved by the arbitrator, and not by a court. Prima Paint, 388 U.S. at 403-04; see Snap-on Tools Corp. v. Mason, 18 F.3d 1261, 1268 (5<sup>th</sup> Cir. 1994); Bhatia v. Johnston, 818 F.2d 418, 421 (5<sup>th</sup> Cir. 1987) (following Prima Paint and holding that when party contends that any alleged misrepresentations fraudulently induced them to enter into contract as a whole, that issue is arbitrable; but if party focuses his claims of fraudulent inducement specifically on the arbitration provision, a court may address the issue.)

Here, the court finds that the Defendant's current claims of fraudulent inducement go directly to the making of the arbitration agreement, as opposed to the making of the entire loan contract. The Defendant indisputably did not consent to arbitrate his claims; and under Prima Paint, if an issue "goes to the 'making' of the agreement to arbitrate, [a court] may proceed to adjudicate it." Prima Paint, 388 U.S. at 404. Here, the Defendant's claims of fraud as to the Arbitration Agreement solely involve conduct surrounding the making of the Arbitration Agreement. Accordingly, the court finds that a court may address those issues, and the Defendant need not be compelled to arbitrate his state law claims. As such, the Defendant's motion to dismiss shall be granted, and the Plaintiff's petition seeking to compel arbitration shall be denied and dismissed. The Defendant shall be permitted to pursue his state law claims in the Circuit Court of Hinds County, Mississippi.

A separate order in accordance with this opinion shall issue this day.

This the \_\_\_\_ day of January 2002.

---

Chief Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

AMERICAN SECURITY  
INSURANCE COMPANY

PLAINTIFF

vs.

No.  
1:01CV273-D-D

ELLIS B. LANG

DEFENDANT

ORDER GRANTING MOTION TO DISMISS

Pursuant to an opinion issued this day, it is hereby ORDERED that

- (1) the Defendant's motion to dismiss or, in the alternative, to deny the Plaintiff's request to compel arbitration (docket entry 3) is GRANTED;
- (2) the Plaintiff's Petition for an order compelling arbitration and to stay the state court proceeding brought by the Defendant in Hinds County, Mississippi, Civil Action Number 251-00-1147CIV (docket entry 1) is DENIED and DISMISSED;
- (3) all other pending motions in this cause are DENIED AS MOOT (docket entries 2, 4 and 6); and
- (4) this case is CLOSED.

All memoranda, depositions, declarations and other materials considered by the court in ruling on this motion are hereby incorporated into and made a part of the record in this action.

SO ORDERED, this the \_\_\_\_ day of January 2002.

---

Chief Judge